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DIGEST OF WATER POLLUTION CONTROL LEGIS-
LATION ... ARKANSAS

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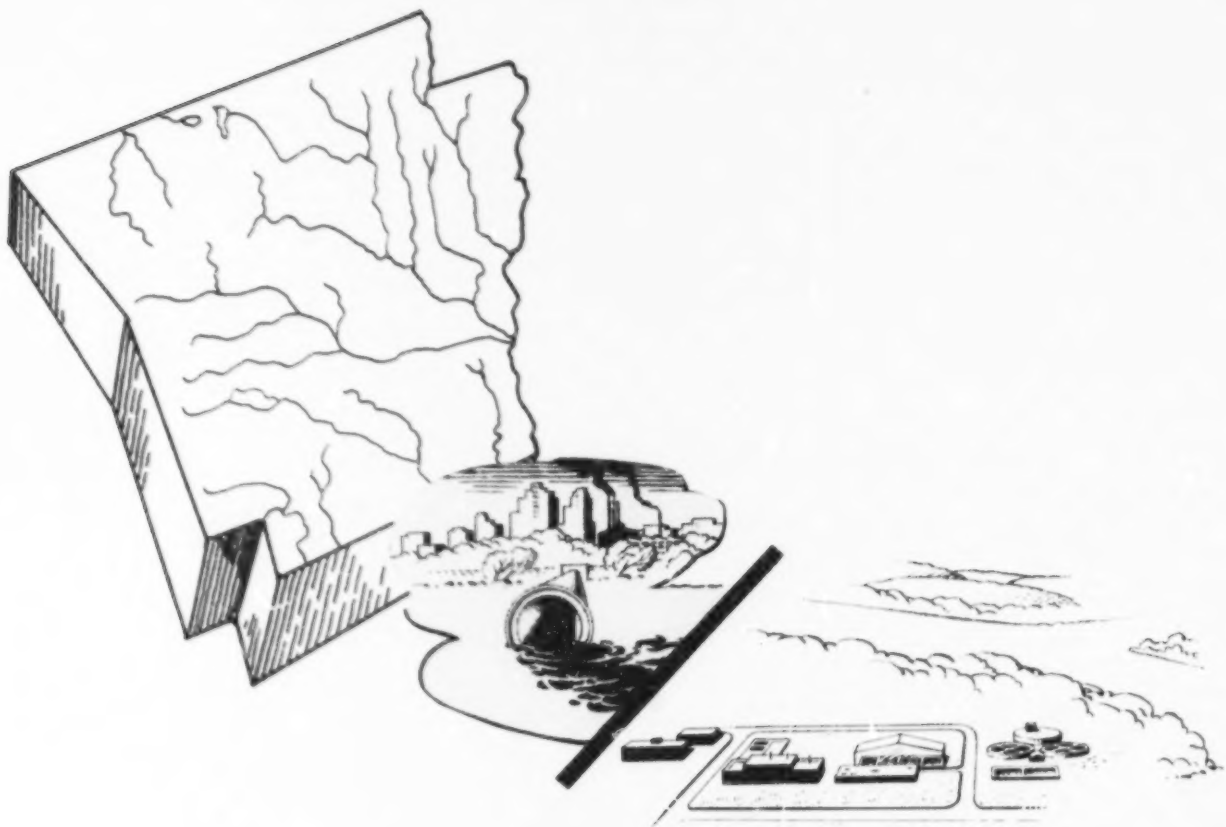
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U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Public Health Service

Section 3 of the Federal Water Pollution Control Act (33 U.S.C. 466b) directs the Public Health Service to "encourage the enactment of improved and, so far as practicable, uniform State laws relating to the prevention and control of water pollution."

This Digest is one of a series prepared by the Public Health Service as a service to the States and others interested in these objectives. Cooperation of State officials in the preparation of these digests is gratefully acknowledged.

September 1958

DIGEST OF ARKANSAS WATER POLLUTION CONTROL LEGISLATION

I. GENERAL STATEMENT

The Arkansas Water Pollution Control Commission, established under the 1949 State Water Pollution Control Act, is responsible for the administration and enforcement of all laws relating to the pollution of waters of the State. The Commission is set up within the State Board of Health, but by statute, it acts independently of the Board, and its members are named by a number of State agencies and by the Governor to represent a variety of interests. However, the Chief Sanitary Engineer of the Board of Health is Technical Secretary of the Commission and the Board of Health names one member of the Commission. The broad authority of the Water Pollution Control Commission to control and abate stream pollution through development of a comprehensive program extends to all streams and lakes within or bordering the State and to underground waters, marshes, watercourses, drainage systems, and natural or artificial, public or private, bodies of water the pollution of which may create a nuisance or be actually or potentially harmful or detrimental to public health, safety, or welfare or to domestic, commercial, industrial, agricultural, or recreational uses, or to livestock or wildlife (Title 47, 1955 Cum. Supp., secs. 802-810). ^{1/}

The Arkansas Game and Fish Commission has authority in the field of water pollution which in many respects is parallel to the authority of the Water Pollution Control Commission. The Game and Fish Commission is authorized to control the disposal of wastes into the waters of the State by municipalities, industries, and public and private persons; to establish pollution standards for such waters; to restrain the discharge of waste material

^{1/} Citations in this digest refer to the Arkansas Statutes Annotated (1947 ed.) and the 1955 Cumulative Supplement thereto, unless otherwise noted.

or polluting substances into State waters; to issue rules, regulations, and orders in carrying out these functions, and also to abate existing pollution independently of any action which may be taken by any other State agency (Title 47, sec. 801; Title 47, 1955 Cum. Supp., secs. 811-813).

The State Board of Health has general supervision and control of all matters pertaining to the health of the citizens, including direction and control over all sanitary measures for dealing with infectious, contagious, and communicable diseases within the State. It may make all necessary and reasonable rules and regulations of a general nature for the protection of the public health and for the improvement of sanitary and hygienic conditions within the State (Title 82, secs. 109, 110). The Board of Health is required to adopt rules and regulations pertaining specifically to the control of industrial health hazards including those related to water supplies and sewage disposal facilities (Title 81, sec. 417). The Secretary of the Board of Health must issue certificates of approval of all plans and specifications in waterworks and sewer improvement districts (Title 20, sec. 302).

The Arkansas Geological and Conservation Commission, which succeeded to some of the functions of the former Resources and Development Commission, is responsible for preparing and adopting an official State plan for the physical development of the State (Title 9, sec. 114). This plan is to contain recommendations for the development of the State which may cover, among other things, the general location, character, and extent of waterways, drainage, and sanitary systems, and works for the prevention of stream pollution (Title 9, sec. 301). After the adoption of an official State plan by the Geological and Conservation Commission, the Commission has review and advisory authority as to the location, character, and extent of proposed improvements, building, structures, or property which may be acquired by any

State or public agency (Title 9, sec. 305). The Geological and Conservation Commission also has authority to control, preserve, and regulate the flow of rivers and streams (Title 9, sec. 803).

The Arkansas Oil and Gas Commission, consisting of seven members appointed by the Governor, is authorized to make, after hearing and notice, necessary rules, regulations, or orders "to prevent the pollution of fresh water supplies by oil, gas or salt water" (Title 53, sec. 111). ^{2/}

The Governor of Arkansas may appoint five members to the Arkansas Water Compact Commission which is authorized to negotiate, with representatives of adjoining States, compacts governing the protection and use of interstate waters (Title 21, sec. 1201).

A Water Commission of eleven members was created in 1955 to conduct a study of methods of establishing a sound policy for the State for the proper use and management of the surface water resources of the State for all beneficial purposes. The Commission is directed to complete the study before the convening of the General Assembly in January 1957, and to prepare a report of its findings together with recommendations for legislative action not later than ten days after the convening of the 1957 session (Acts of Arkansas No. 250 (1955)).

II. ADMINISTRATIVE ORGANIZATION

A. Water Pollution Control Commission

1. Composition and Organization

The Commission is composed of eight members; one of whom is designated by each of the following State agencies: the Board of Health, the Game and Fish Commission, the Oil and Gas Commission, the Geological and

^{2/} "Should be recognized to be a subsurface function and not to be a function that concerns itself with surface waters." As per comments on Arkansas Pollution Digest made by Mr. George Holden, Director, Arkansas Oil & Gas Commission, in letter dated December 14, 1956.

Conservation Commission, and the State Forestry and Parks Commission; and three of whom are appointed by the Governor with the consent and approval of the Senate, to represent respectively municipal, industrial, and agricultural and livestock interests in the State. The Commission elects its own Chairman and Vice-Chairman annually. It is required to hold at least four regular meetings annually and the Chairman may call special meetings, and must do so upon the written request of two members (Title 47, 1955 Cum. Supp., sec. 803 (a)). The Chief Sanitary Engineer of the State Board of Health serves as the Technical Secretary of the Commission. He is the executive officer and active administrator of all water pollution control activities and is delegated such power and duties as the Commission directs, attends meetings of the Commission, but may not vote (Title 47, 1955 Cum. Supp., sec. 803 (b)(c)).

The Water Pollution Control Commission is authorized to administer and enforce all laws and regulations relating to the pollution of any Arkansas waters (Title 47, 1955 Cum. Supp., sec. 804, subdiv. 2). However, the State Game and Fish Commission and the State Board of Health exercise functions which appear to overlap those of the Water Pollution Control Commission (Title 47, sec. 801, 1955 Supp., secs. 811-813; Title 20, sec. 302; Title 81, sec. 417; Title 82, sec. 110). There is no provision for an advisory council to the Water Pollution Control Commission, but the State Geological and Conservation Commission, the State Health Board, and the temporary Water Commission have advisory functions which relate to water pollution control.

2. Powers and Duties

a) Development of comprehensive program; Setting standards for limits of pollution and quality of water

The Commission is responsible for preparing a comprehensive program

to eliminate or reduce the pollution of the waters of the State. In this connection it is authorized to investigate the extent, character, and effect of the pollution of State waters and to conduct investigations, and gather data relevant to the administration and enforcement of the pollution laws; to classify the waters of the State as it may deem advisable; and to establish reasonable pollution standards for any waters of the State in relation to the use to which they are or may be put (Title 47, 1955 Cum. Supp., sec. 804, subdivs. 3, 4, 5).

b) Issuance of permits and review of plans and specifications

The Commission issues permits for the discharge of sewage, industrial, or other wastes, for the continuance of every disposal system operating on or after March 29, 1949, and for the construction, installation or operation of new disposal systems or parts thereof. The Commission may revoke or modify any permit to prevent or abate pollution; approves plans and specifications for the construction of disposal systems; and inspects such construction for compliance with approved plans (Title 47, 1955 Cum. Supp., sec. 804, subdivs. 7,8,9). The Commission also issues permits for making material alterations in the method or the effect of treating or disposing of sewage or waste. Operation of a disposal system in violation of the rules and regulations of the Commission are grounds for the revocation of a permit (Title 47, 1955 Cum. Supp., sec. 808, subdivs. 1,2,3,4).

c) Enforcement

If an urgent emergency exists affecting the public health or welfare the Commission is authorized to issue a temporary order without notice or hearing. In other cases, before a final order may be issued by the Commission, it must give written notice to the persons to be affected by the order and must hold a hearing. Persons affected by an order, rule, regula-

tion, or other final decision of the Commission, or the Attorney General in behalf of the State, may appeal to the Circuit Court of the County where the matter appealed from would take effect by filing a notice of appeal with the Commission within 30 days of the date of the final order and by filing the original notice of appeal with proof of service within 10 days of such service with the Clerk of the Circuit Court. The trial on appeal is heard by the Judge without a jury. If the Court determines that the action of the Commission is lawful and reasonable and supported by evidence where an issue of fact is involved, it will affirm the action of the Commission; otherwise, it may vacate or suspend such action in whole or in part and remand the case to the Commission for further action. Orders of the Commission are not stayed by an appeal except by order of the Court. Orders, rules, and regulations of the Commission are prima facie reasonable and valid and the Commission's findings of fact are prima facie evidence of the matters asserted for purposes of appeals, but the court may, in its discretion, try all issues of fact de novo. If no appeal is taken from an order, rule or regulation of the Commission, or if on appeal the order is affirmed, the action of the Commission is conclusive (Title 47, 1955 Cum. Supp., sec. 806).

Violation of any provision of the Act or of any rule or regulation of the Commission is a misdemeanor, and each day the violation continues is a separate offense.

Pollution of any waters in violation of any provision of the Act or of any order or regulation of the Commission is a public nuisance which may be enjoined or abated, and if the violation is also a violation of criminal law, that fact does not bar a suit to abate the nuisance (Title 47, 1955 Cum. Supp., sec. 809).

d) Conduct of studies, investigations and research

The Commission is authorized to investigate the extent, character, and effect of the pollution of State waters and to conduct investigations, research, surveys, and studies, and gather data and information necessary or desirable in the administration or enforcement of the pollution laws (Title 47, 1955 Cum. Supp., sec. 804, subdiv. 3).

e) Cooperation with other public and private agencies

The Commission acts as the State Water Pollution Agency for the purposes of the Federal Water Pollution Control Act. It may approve construction projects for loans and grants from the Federal Government to State and interstate agencies; may consent on behalf of the State to the institution of suit by the Federal Government for abatement of water pollution; and may take any other appropriate action to secure for the State the benefits of the Federal Water Pollution Control Act (Title 47, 1955 Cum. Supp., sec. 804, subdiv. 12).

The Commission may assist and cooperate with any agency of another State or the United States in any matter relating to water pollution control; it may accept money, property or services from any person or cooperating agency or from any other source for any water pollution control purpose within the scope of its functions, and all such moneys are to be used for its operation and activities. The Commission is also authorized to enter into agreements with the responsible authorities of other States, subject to the approval of the Governor, concerning policies, methods, means, and procedures to be employed to control pollution of any interstate waters and may carry out such agreements by appropriate orders. The Commission may not modify an agreement with another State concluded by direct legislative Act, but unless otherwise expressly provided, the Commission is the agency for

the administration and enforcement of any such legislative agreement (Title 47, 1955 Cum. Supp., sec. 807. subdiv. 1,2,3).

f) Administrative powers

The Water Pollution Control Commission may conduct investigations and hold hearings in performing any of its duties under the Act and it may authorize any member, employee, or agent to conduct investigations or hold hearings. For such hearings any member, employee, or agent may administer oaths, examine witnesses, issue subpoenas requiring the attendance of witnesses and the production of evidence relevant to the matter under investigation. Witnesses before the Commission receive the same fees and mileage as are paid in ordinary civil actions. The Circuit Court may, upon application of the Commission or its authorized member, order compliance with a subpoena or with an order to testify issued by the Commission, and refusal to comply is punishable as contempt (Title 47, 1955 Cum. Supp., sec. 804, subdiv. 11 (1),(2),(3)).

Any person operating a disposal system, when requested by the Commission, is required to furnish it with relevant information. The Commission or any of its employees or agents may examine any book, papers, or records pertaining to the operation of a disposal system. The Commission or any member, employee, or agent may enter upon any property, public or private, to obtain necessary information or to conduct surveys or investigations (Title 47, 1955 Cum. Supp., sec. 805, subdivs. 1,2,3).

The Commission makes rules and regulations for the conduct of its business (Title 47, 1955 Cum. Supp., sec. 804, subdiv. 10).

3. Statement of Policy; Severability clause

The pollution of the waters and streams of the State from sewage, industrial waste, garbage, municipal refuse, and many other sources is

hazardous and dangerous to the public health of the people of the State, and is endangering the fish and other wildlife of the State. Under previous laws, sewer systems, disposal plants, and treatment works were not adequately inspected, and the prevention of stream pollution and the protection of the health of the people was inadequate. The continuance of such conditions present an immediate and continuing threat to the public peace, health and safety (Acts of Arkansas No. 472, sec. 12 (1949)).

The Act contains a severability clause (Acts of Arkansas No. 472, sec. 10 (1949)).

III. ARKANSAS STATE GAME AND FISH COMMISSION

A. Composition

The Arkansas Game and Fish Commission is composed of eight members, seven of whom are active, and one associate, the Head of the Department of Zoology at the University of Arkansas, without voting power. The members are appointed by the Governor. The Commission elects an executive secretary who has authority to act for the Commission (Title 47, secs. 101, 115, 117). There does not appear to be any provision for an advisory council.

B. Powers and Duties

1. Development of comprehensive program

The Game and Fish Commission is authorized to control disposal of waste into lakes, rivers, and streams of the State and to establish pollution standards for waters of the State in relation to the public use to which they are or may be put, although it does not have authority to develop a comprehensive program for water pollution control, as does the Water Pollution Control Commission (Title 47, sec. 801).

2. Issuance of permits and review of plans and specifications

There are no provisions for issuance of permits or review of plans and specifications by the Game and Fish Commission.

3. Enforcement

The Game and Fish Commission may issue orders and regulations to control or restrain the discharge of any waste material or polluting substance discharged or sought to be discharged into any river or other waters of the State. Persons aggrieved by any order of the Game and Fish Commission may ask for a hearing upon the filing of a sworn petition. At such hearing the petitioner and any other party in interest may appear and present witnesses and submit evidence. After hearing the final order of the Commission is conclusive unless appealed from within 10 days to the Circuit Court of the Second Division of Pulaski County, in which event the decree of the Court takes the place of the order of the Commission.

The Game and Fish Commission is authorized to bring any appropriate action in Court in the name of the State that appears necessary to carry out the provisions of the Act. Persons violating any provisions of the Act or order of the Commission may be found guilty of a misdemeanor and upon conviction are punishable by a fine of not less than \$100.00 nor more than \$3,000.00, and costs, or by imprisonment in the county jail not to exceed one year or by both. Each day's violation of the provisions of the Act is a separate offense. It is unlawful for any person to discharge or permit to be discharged into any of the waters of the State any waste or pollution of any kind that will tend to destroy fish or other aquatic life or wild or domestic animals or fowls or which is injurious to the public health or against the public welfare in violation of any rule, order, or regulation of the Commission, and anyone discharging such waste or pollution may be guilty of a violation of the provisions of the Act (Title 47, sec. 801).

4. Conduct of studies, investigations and research

The Game and Fish Commission may make such investigations as are

necessary to carry out the provisions of the Act (Title 47, sec. 801).

Upon petition of 20 or more residents of an area affected by pollution of any stream or lake in the State, the Game and Fish Commission is required to make an investigation thereof within 30 days of the filing of such petition (Title 47, 1955 Supp., secs. 811, 812).

5. Administrative powers

The Game and Fish Commission has authority to make and promulgate rules and regulations and to conduct investigations necessary to carry out the provisions of the Act. Its rules, regulations, and orders are required to be published in one issue of a newspaper of general circulation in the county affected and also in one issue of a newspaper having statewide circulation. The Game and Fish Commission or its authorized agents may enter at all reasonable times in or upon any private or public property to inspect and investigate conditions relating to the pollution of any waters of the State (Title 47, sec. 301).

C. Preservation of existing rights and remedies

The Act does not repeal any State laws, but is to be construed as an auxiliary thereto, except where in direct conflict (Title 47, sec. 801).

D. Statement of policy; severability clause

The Act attempts to remedy the pollution of waters of the State and was enacted as an emergency measure, necessary to preserve the public peace, health, safety, and the conservation of wildlife (Title 47, sec. 801).

IV. STATE BOARD OF HEALTH

A. Composition

The State Board of Health is composed of nine members appointed by the Governor. A member is selected from each of the seven Congressional Districts and two members are selected at large. If the Congressional Dis-

tricts of the State are increased or decreased, the membership of the Board varies accordingly. Each member chosen from a Congressional District must be a graduate of a reputable medical college. Of the two members chosen at large, one is required to be a registered practicing dentist, and the other a registered pharmacist. The Board elects one of its members as President and also elects a Secretary who may or may not be a member of the Board. If the Secretary is not a member of the Board he must be a graduate of a reputable medical college and have at least seven years experience in the practice of his profession in the State. The Secretary of the Board has all the powers of the members of the Board, is the State Health Officer, and the executive officer of the Board, and performs such duties as are required of him by the Board (Title 82, 1955 Cum. Supp., secs. 101, 103).

B. Powers and Duties

1. General Authority

The State Board of Health is responsible for the general supervision and control of all matters relating to public health. It makes all necessary and reasonable rules and regulations of a general nature for the protection of the public health and for the improvement of sanitary and hygienic conditions within the State (Title 82, sec. 110). It must also adopt specific rules and regulations for the control of industrial health hazards, including requirements as to water supplies and sewage disposal facilities (Title 81, sec. 417).

2. Issuance of permits and review of plans and specifications

The State Health Officer issues certificates of approval of all plans and specifications in waterworks and sewer improvement districts. A certificate of such approval must be filed with the city clerk or town recorder (Title 20, sec. 302).

3. Enforcement

Violation of orders, rules, and regulations of the Board of Health is a misdemeanor punishable by fine or imprisonment or both (Title 82, sec. 121).

The State Board of Health is authorized to enjoin any municipality or water improvement district from permitting boating or fishing on a lake or reservoir where the safety of the water supply is not adequately protected (Title 19, sec. 4236).

The State Board of Health may, upon the order of the Governor examine into nuisances, and has all powers necessary for making such examinations. When examination and report by the Board of Health discloses that a nuisance exists and the report is approved by the Governor, he declares that a public nuisance exists and issues orders directing removal or abatement of the nuisance. Violation of any such order is a misdemeanor punishable by a fine or imprisonment or by both (Title 82, secs. 112, 121).

4. Conduct of studies, investigations, and research

The State Board of Health may engage persons to render sanitary service, to make or supervise practical and scientific investigations and examinations requiring expert skill, and to prepare plans and reports relative thereto (Title 82, sec. 114).

5. Administrative powers

The State Board of Health is authorized to publish for general distribution reports and other matters to promote the interest of the public health of the State (Title 82, sec. 119). The Board also makes an annual report to the Governor. This report contains, among other things, matters relating to sanitation and hygiene with suggestions as to legislative action regarded as necessary (Title 82, sec. 122).

All officers and agents having custody or control of any public structure, work, ground or erection, or any plan, outlines, drawings, or charts made or controlled under public authority are required to permit the examination and inspection thereof by the State Board of Health or its agents. The members of the Board or anyone authorized by it may enter, examine and survey all grounds, erections, structures, buildings and plans whereby the public health may be promoted or in any way preserved (Title 82, sec. 114).

V. MISCELLANEOUS STATUTORY PROVISIONS RELATING TO WATER POLLUTION

Pollution of water or injury to water supplies or waterworks are prohibited (Title 19, sec. 2317).

Committing a nuisance in or near an impounding dam or reservoir of a water plant or polluting or affecting the wholesome qualities of water in such dams or reservoirs are misdemeanors punishable by a fine not exceeding \$200.00 (Title 35, sec. 407).

Throwing or dragging dead animals or animals in a dying condition into any running stream or other body of water is a misdemeanor punishable by a fine (Title 41, sec. 3301).

Poisoning any lake or stream of water for the purpose of killing fish, stock, or for any other purpose is a misdemeanor punishable by a fine (Title 41, sec. 4405).

Bathing or swimming in any lake or reservoir used by a municipality or water improvement district for its water supply, or in certain parts of non-navigable streams adjacent to land belonging to such districts are misdemeanors punishable by a fine except for lakes or reservoirs with a surface area greater than 1,000 acres (Title 19, secs. 4232, 4238).